

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALEXANDER E. JONES and) CASE NO: 22-33553-cml
OFFICIAL COMMITTEE of)
UNSECURED CREDITORS,) Houston, Texas
Debtors.) Wednesday, September 11,
2024
12:00 PM to 12:24 PM
-----)
NEIL HESLIN, ET AL.,) CASE NO: 23-03035
ADVERSARY
Plaintiffs,)
Vs.)
ALEXANDER E. JONES, ET AL.,)
Defendants.)
-----)
DAVID WHEELER, ET AL.,) CASE NO: 23-03037
ADVERSARY
Plaintiffs,)
Vs.)
ALEXANDER E. JONES, ET AL.,)
Defendants.)
-----)

STATUS CONFERENCE

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

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1 HOUSTON, TEXAS; WEDNESDAY, SEPTEMBER 11, 2024; 12:00 PM

1 THE COURT: Good afternoon. Okay. Anyone on the
2 line wish to make an appearance, please hit five star.
3 Here's a 918 number.

4 MR. MCCLELLAN: Yes, Your Honor. This is Deric
5 McClellan on behalf of the Debtor, Alex Jones.

6 THE COURT: Okay. Good afternoon, sir. There's a
7 212 number.

8 MR. KIMPLER: Good afternoon, Your Honor. It's
9 Kyle Kimpler from Paul Weiss on behalf of the Connecticut
10 families. With me today is my co-counsel, Ryan Chapple and
11 Alinor Sterling.

12 THE COURT: Okay, good afternoon. And a 713
13 number.

14 MR. MOSHENBERG: Good afternoon, Judge. It's Avi
15 Moshenberg here on behalf of the Texas plaintiffs.

16 THE COURT: Good afternoon. Anyone else wish to
17 make an appearance? Okay.

18 The purpose of today is just we haven't seen each
19 other in a while. I thought it made sense to get together.
20 I know I checked the docket and it sounds like there were
21 some orders entered by Judge Eskridge; it's the underlying
22 adversary proceeding that went before the District Court at
23 some point. And I thought maybe we could at least just talk
24 about the Jones case itself and kind of what's going on and
25 where things are going and if you needed anything.

1 MR. MURRAY: Sure. So at the most urgent level,
2 we filed and we're hoping to get it set before Friday, a
3 motion to sell the lake house. The time urgency there is
4 that the buyer is in a unique situation. They apparently
5 have to identify the target property for a 1031 exchange.
6 Their deadline to do that is Friday. We're hoping to get
7 approval for a sale so that they can designate our property
8 and we can proceed with the process to sell to them. We
9 filed that last night.

10 THE COURT: Okay. Since I know most of the folks
11 who are involved in that case are here, is there any
12 objection? If anyone has any objection about it, that
13 someone please let me know and I'm certainly with everyone's
14 rights. What else is going on just generally in the case?

15 MR. MURRAY: So we also have a pending motion
16 that's set for hearing on the 24th of September, and that is
17 a motion for authority for me, as Chapter 7 Trustee in the
18 Jones case, to wind down assets of FSS.

19 THE COURT: Okay.

20 MR. MURRAY: And that is a liquidation process.
21 We have also filed a motion to retain Tranzon Advisors as
22 our auctioneer, and they've started work preparing the
23 marketing materials, and the idea there is to auction the
24 assets of FSS. Now they're disputing claims on those
25 assets. This Chapter 7 estate owns a hundred percent of the

1 entity. Certainly, the entity is insolvent from a balance
2 sheet perspective because of the judgments against it, but
3 you also have PQPR asserting a lien on all the assets.

4 Our idea is to liquidate the assets of FSS, but
5 all of the proceeds, net of the cost of the liquidation,
6 would be kept pending further court order so that we can
7 punt on all those other issues. We're talking to all the
8 parties. I think there's at least a fair chance that we
9 might be able to resolve some of those issues short of
10 litigation. But if we have to litigate, we're going to hold
11 everything until those disputes are resolved.

12 THE COURT: Okay. Anything else going on just
13 generally? Aside from the -- says that we're having a
14 hearing, we may have a hearing on Friday, there's a
15 potential hearing -- a hearing on the 24th, just generally
16 how are things going?

17 MR. MURRAY: So another sort of general issue, it
18 relates more to the FSS estate, but the professional fees
19 were approved there. There was an order to pay professional
20 fees. There was some cash of FSS that I've been holding as
21 the Chapter 7 Trustee.

22 THE COURT: Yup.

23 MR. MURRAY: I paid professional fees for all but
24 one professional who hasn't provided payment instructions
25 yet, paid those out of those funds. What was interesting to

1 me, all of the professionals so far have requested that
2 those payments not go to operating, but go to IOLTA
3 accounts. And the concern that's been raised is those are
4 still FSS cash or at least proceeds of FSS cash arguably
5 under the ages of the turnover order. Now Your Honor may
6 require a turnover issued in state court. There was also a
7 garnishment action filed. Both of those were removed to the
8 Bankruptcy Court in the Western District. They have now
9 been consolidated in front of Judge Bradley.

10 There is a pending motion from the plaintiffs to
11 remand those actions down to state court. My concern is
12 those orders in those actions bear directly on
13 administration of these cases and the FSS matters you retain
14 jurisdiction over. So our intention is in the near term to
15 file a motion to at least transfer venue of the removed
16 actions to this court, so -- and I think the Bankruptcy
17 Court supports this -- have all related matters heard in
18 front of the same court. We have not gotten consent from
19 the plaintiffs to that motion, so that might be contested
20 over in the Western District, but that's sort of where that
21 stands.

22 And so, there's concern among the professionals
23 and some concern among other parties that until that
24 turnover order and that garnishment proceeding are finally
25 resolved, there's a cloud over the authority of what's going

1 on in this court with these matters.

2 THE COURT: Okay. I will -- I'll let the process
3 play out, but if you -- just keep me apprised as to what
4 happens with the -- you're saying there's a motion to
5 transfer.

6 MR. MURRAY: We haven't filed a motion to transfer
7 venue yet, but we intend to shortly. And there's a pending
8 motion to remand and, obviously, we'd like the venue issue
9 to be heard first, but that will take place before the
10 Western District and before Judge Bradley.

11 THE COURT: Okay. I will -- I will -- keep me
12 informed about what's going on. And if I need to bring the
13 Texas plaintiffs in here to explain to me what's going on,
14 I'll do it, but maybe I don't need to. Okay?

15 MR. MOSHENBERG: And, Your Honor, I'm here.

16 THE COURT: Oh no, no, no. I mean on a separate
17 matter fully, but I want to respect the process. That's not
18 before me and I don't want to put my thumb on the scale
19 about anything. I just want to make sure that I stay
20 informed about what's going on and I don't want to put my
21 thumb on something. Judge Bradley has the case and I think
22 he gets to make the call on those issues and he decides and
23 whatever he decides, he decides. I don't -- I don't have a
24 say on it one way or the other, nor do I want to.

25 MR. MOSHENBERG: That's fair, Judge.

1 THE COURT: Okay. So let me -- what else do we
2 need?

3 MR. MURRAY: That's our status update.

4 THE COURT: Okay.

5 MR. MURRAY: If Your Honor has questions about any
6 other aspects, we're here and ready to answer.

7 THE COURT: No, no, no. I just wanted to make
8 sure that we were all on the -- kind of operating on the
9 same page and it's been a while since we had talked. I
10 didn't know if you needed any court time. I knew that that
11 was that one motion that had been filed.

12 Maybe I can just open it up and just hear from the
13 parties about potentially scheduling a hearing on Friday
14 about this matter. If we did it, I can tell you now...

15 MR. WOLFSHOHL: Your Honor, is this on the sale
16 motion that we were talking about?

17 THE COURT: The potential, what I'll call the
18 Friday motion.

19 MR. WOLFSHOHL: The Friday motion. So just so you
20 know, I'm going to be in your court at 11:30 on a motion to
21 sell in the Texmark Chemical Exchange. So if it's somewhere
22 around that time period...

23 THE COURT: How long do you think that'll go?

24 MR. WOLFSHOHL: I think it will be half an hour at
25 the most. I don't think it's going to be contested. I

1 think it's mostly just going to be Mr. Sommers, you know,
2 sort of proffering testimony.

3 THE COURT: Let me just see. Why don't we
4 schedule it tentatively for noon on Friday, subject to
5 anyone's rights to come in and tell me otherwise. Anyone
6 else in the courtroom? Miss Catmull.

7 MS. CATMULL: Thank you, Your Honor. Number one,
8 I'm working with Mr. Harold Mane on a different matter.
9 He's mediating it today, but he asked me to announce to the
10 court that due to an error I think in the proposed order on
11 its fees, I think he's going to be asking -- this is just an
12 FYI -- he's going to be asking for some sort of an amended
13 order that makes a \$23,000 difference, so that's heading his
14 way.

15 And then just on the -- we're one of the law firms
16 that's holding the funds in our IOLTA account. We've been -
17 - it seems to me, that issue will play out -- I've been
18 thinking it through -- in one of four procedural ways. One
19 may be the -- well, one obviously one would be stay
20 litigation; hopefully, it won't come to that. Two, there is
21 the Trustee's pending motion for emergency relief that the
22 Court took up on the status conference on in June, so maybe
23 it'll get cleared up then. Three, I guess if venue gets
24 transferred here, the Court could address it because the
25 Court will have jurisdiction over the turnover order. And

1 then, four, there is still the issue of the Court's amended
2 dismissal order that it discussed at the hearing -- the
3 status conference on the Trustee's emergency motion.

4 So I'm going to see how those play out and then
5 confer with all the parties.

6 THE COURT: The issue, and I don't want to kind of
7 belabor it, is I wrote an order so it's got to have -- so
8 the question is what affect does my order do and did I just
9 write an order that has no -- that no one can enforce
10 because there's concerns about what the order says. So did
11 I just write an order in absentia and just kind of just
12 floats out there that no one can actually use, right, or I
13 authorize the Trustee to write a check and then someone else
14 can then backdoor and get the cash. That's what I mean, but
15 I'll let the process play itself out. I don't want to get
16 in the way of it.

17 But thank you very much, but I don't want to wait
18 really long for that. Well, we'll take that up in due
19 court.

20 MS. CATMULL: Thank you, Your Honor.

21 THE COURT: Thank you. Mr. Kimpler, can I just
22 ask you just with respect to the adversary proceedings, is
23 there anything -- that's been certainly a while since we
24 talked about that. Is there anything in any of them that I
25 should kind of be aware of, anything we need to do in those

1 cases? I don't know if there is, but if there is, I don't
2 want it to get kind of lost in what we're doing.

3 MR. KIMPLER: There is, Your Honor. So let me
4 just level-set, because it has been a long time since we
5 talked about those.

6 Your Honor, of course, ruled on summary judgment
7 last October. You'll recall that you granted summary
8 judgment on the majority of the claim; you denied summary
9 judgment on a portion of them.

10 Following that decision, Mr. Jones sought
11 interlocutory appeal because the order is not final because
12 you have not fully resolved all of the claims. That was
13 briefed last year and, as you already alluded to, Judge
14 Eskridge held oral argument about that, I believe, in late
15 June of this year. Judge Eskridge denied the interlocutory
16 appeal, so what he is saying is we do need to get a final
17 order before you before it can go up on appeal.

18 So where that leaves us right now is that we do
19 need to get to a resolution on whether the -- in the
20 Connecticut plaintiffs' case, the \$300 million or so of
21 common law punitive damages are not for far or not
22 dischargeable. What your order has done, Your Honor, is
23 just denied our motion for summary judgment that they were
24 dischargeable. I doubt you've looked at the order itself,
25 but if you look at the opinion that Judge Eskridge wrote...

1 THE COURT: There's kind of a point in there that
2 he wanted me to make sure that I thought about and that was
3 going to be my question.

4 MR. KIMPLER: He did, so there's a suggestion
5 about maybe we should take a second look at that.
6 Obviously, he's not prejudging and I'm not either. But one
7 of two things does need to happen before Your Honor. We
8 either need to get a trial schedule going to get final
9 resolution on that piece or we can file a reconsideration
10 motion. Our plan is to file a Rule 54(b) reconsideration
11 motion. We probably will have that on file if not the end
12 of this week, the beginning of next week. It's a pretty
13 short motion. It lays out the issues it asks you to
14 reconsider.

15 In our view of the appropriate next steps and
16 we've had some discussions with Mr. Jones' counsel on this.
17 But our view of the appropriate next steps is let's brief
18 that issue. I don't think it takes a lot of briefing.
19 Again, I think our brief is probably 12 to 15 pages. I
20 think you could do it in about 30 days. We'd ask you to
21 take a second look at that. It may be that you say I got it
22 right the first time, there's nothing to reconsider, at
23 which point we then need to start thinking about trial steps
24 to then take that claim to conclusion. It may be that you
25 take a second look at it, think that maybe you can resolve

1 it, in which case then we have a final order and the whole
2 thing can go back up to Judge Eskridge.

3 THE COURT: Mr. Kimpler.

4 MR. KIMPLER: Yes.

5 THE COURT: I think I cut you off on the point
6 where you were actually telling me what the specific issue
7 was. Can you just identify for me...

8 MR. KIMPLER: Yes. So there is \$300- -- so
9 there's a \$1.4 billion collective judgment for the
10 Connecticut plaintiffs. Your order found that \$1.1 billion
11 of that was non-dischargeable.

12 THE COURT: Right.

13 MR. KIMPLER: Ther is \$300 million of it that is
14 really attorneys' fees, but it's the common law punitive
15 damages.

16 THE COURT: I remember.

17 MR. KIMPLER: And you found that because the jury
18 instructions there included an element of wantonness, that
19 you could not grant summary judgment. And not to get too
20 into the weeds, but there is -- there's case law that
21 suggests that those ancillary types of obligations follow
22 the underlying conduct.

23 THE COURT: Right.

24 MR. KIMPLER: And so, to preview what our
25 reconsideration motion will say is if you found the

1 underlying conduct to be willful and malicious, then
2 ancillary obligations such as attorneys' fees, expenses are
3 also non-dischargeable. So that is what we would try to tee
4 up for you on a motion for reconsideration. Again, I don't
5 want to --

6 THE COURT: I got it. I remember.

7 MR. KIMPLER: But as far as next steps for you and
8 court time and things like that, it is our intent to file
9 that motion -- again, it's a fairly brief motion -- sometime
10 in the next week, and then we'd be willing to agree to
11 whatever schedule works for Mr. Jones. But we'd like to get
12 that resolved soon so that we can get a final order in this
13 court and then get up to the next level of appeal as soon as
14 possible. It may be that that's not what happens and we
15 need to then start talking about -- to resolve the issue,
16 you know, a trial schedule or something like that.

17 THE COURT: Understood. Thank you very much.
18 Thank you, okay. Yup, got it. Got it.

19 Mr. Moshenberg, is this -- in the Texas adversary,
20 is there something we need to -- can you kind of tell me
21 where things stand there?

22 MR. MOSHENBERG: Yes, Your Honor, gladly. We're
23 in similar boats as Mr. Kimpler in terms of a motion to
24 reconsider, the way I understood at least the hearing, but I
25 think from the order we gleaned as well. One of the issues

1 we moved for summary judgment on was the total amount being
2 non-dischargeable. The Court thought that there was a fact
3 issue on that.

4 But one of the arguments we made and we explained
5 to Judge Eskridge is the Court couldn't have awarded
6 punitive damages unless there was a finding of an intent to
7 apply intentionally inflicting emotional distress on someone
8 with an actual intent to do it, because the only way to
9 exceed Texas's punitive damages cap is with an intent crime.
10 And the Court's opinion talked about how we don't know
11 whether certain damages like punitive damages were awarded
12 out of recklessness or some lower standard that's below
13 willful and malicious standard.

14 And so, Judge Eskridge, you know, the way I read
15 the order at least, encouraged us to come to this Court and
16 reconsider that issue as well.

17 THE COURT: That's the one with the -- but that
18 has the constitutional issue, right? That's the --

19 MR. MOSHENBERG: No, Your Honor, there is no
20 constitutional issue.

21 THE COURT: No, no, I thought there was a -- if I
22 remember correctly, wasn't there kind of a -- I do remember
23 this issue. Now, I remember what I did and why in that one.
24 I think there was. It may not be a constitutional issue,
25 but I remember there was a jury charge issue there about

1 kind of what the jury -- I remember the issue, yup. Let's
2 tee the issues up, let's do it that way.

3 MR. MOSHENBERG: Thank you, Your Honor.

4 THE COURT: And then we can kind of proceed. I'm
5 glad we're having a conversation just to kind of get things
6 back on track. What I would ask -- and I'll turn to Jones'
7 counsel -- what I would ask Mr. Kimpler and Mr. Moshenberg
8 is once you get your pleadings on file, just let my case
9 manager know just so I know it's on and the clock is ticking
10 and that there's going to be a response and then I can take
11 it up. It would just help me from a scheduling standpoint.

12 MR. KIMPLER: Sure, Your Honor. I'm happy to do
13 that. One wrinkle, I just want to be up front with the
14 Court on this, you know, as I've mentioned to the Court on
15 the 14th when we met in person, Your Honor, one of our goals
16 is bankruptcy was to get closure for our clients and reach
17 some sort of outcome where there's a payment that's fair and
18 Jones stops talking about Sandy Hook and we move on. My
19 clients get to move on at least.

20 And I think that's a little bit of a different
21 goal than what Connecticut has, Your Honor. And in that
22 vein, we've had very constructive talks with Jones' counsel
23 and I'm hoping that leads to some sort of resolution that we
24 can, you know, tell you about, Your Honor.

25 But the reason I bring all that up is I think in

1 terms of the timeline of litigating and the adversaries, I'm
2 not sure how much -- if we're going to get to a deal, I
3 don't want to burden Your Honor with a bunch of filings and
4 pleadings. So I just want to advise that for Your Honor
5 right now because, you know, my hope is that this is all
6 moot and there's eventually a deal and closure for my
7 clients.

8 THE COURT: Thank you. No, no, look, and if the
9 parties want to resolve, just let me know. Whatever you get
10 on file, just let me know. It's a little bit of a -- it
11 would be super helpful for me because I think from a
12 tracking standpoint just so that we stay on pace, so thank
13 you.

14 Anyone from Jones' counsel wish to address the
15 Court?

16 MR. MCCLELLAN: Yes, Your Honor. Can you hear me?

17 THE COURT: Just fine.

18 MR. MCCLELLAN: This is Mr. McClennan.

19 THE COURT: Yes, yes. Good afternoon, sir.

20 MR. MCCLELLAN: Good afternoon. I guess first of
21 all, I just wanted to say I think Miss Driver is on the
22 line. She was telling me that she'd been trying to raise
23 her hand and couldn't get through, so I just wanted to...

24 THE COURT: Oh, no, I see her. I see her there.
25 Thank you.

1 MR. MCCLELLAN: I think she's going to let me go
2 first and then she might have something to say afterward.

3 Yes, I guess, you know, starting with, you know,
4 what Mr. Kimpler said. Yeah, I mean, I think I would agree
5 with, you know, what he said with the status of the case,
6 what the Southern District said. You know, we had been in
7 talks about next steps. They had, you know, kind of told us
8 that maybe they were going to file a Rule 59(b) motion. It
9 sounds like that's what they are going to do. It sounds
10 like that's kind of what the Court wants them to do to get
11 the issues kind of lined out. Obviously, we disagree with
12 the ancillary fees argument. We'll address that in
13 briefing.

14 We think that, you know, the Court did not grant
15 -- denied summary judgment on the common law punitives for a
16 disjunctive jury instruction, which seems to be what they
17 did, at the court. We argue that the Court should have done
18 that with the, you know, defamation and IED claims. We'll
19 address that in the briefing if that's the way the Court
20 wants to go. And then depending on, you know, what Your
21 Honor decides, if there is still one claim of damages left,
22 then I guess we'll have to get a trial schedule and move on
23 from there.

24 THE COURT: Got it. Thank you. Miss Driver.

25 MR. MCCLELLAN: Thank you, Your Honor.

1 MS. DRIVER: Good afternoon, Your Honor. I was
2 almost wondering if you didn't want to hear from me.

3 THE COURT: No.

4 MS. DRIVER: I just didn't want to make a fool out
5 of myself waving too much.

6 Your Honor, Mr. McClellan is absolutely handling
7 the Connecticut matter. I don't have anything else to say
8 on that. And Mr. Moshenberg accurately described what I
9 think will need to happen in the Texas adversary in the
10 event we aren't able to finish off our resolution. But I
11 agree with him, we're having productive talks.

12 And I think our issues for Mr. Jones and what the
13 Texas plaintiffs are trying to do here are going to align in
14 a way that we can resolve those issues, hopefully, without
15 any need for any further hearings in that particular
16 adversary or, hopefully, in any of the Texas appeals and
17 things of that nature.

18 THE COURT: Okay. Is there anything -- so it
19 sounds like there'll be a couple of motions filed in the
20 adversary proceedings and folks will let me know. We'll
21 come back on Friday, take up the emergency motion, and then
22 come back a couple of weeks later -- I think the 24th -- and
23 take up another motion there.

24 Is there anything else that anyone wishes to -- I
25 guess you'll keep me apprised as to kind of other matters as

1 they come up. Okay, let me just check, make sure I didn't
2 forget anyone else who hit five star. Okay. Folks, I think
3 that's it. I just wanted to just make sure that I turn my
4 attention back and made sure that everyone was getting what
5 they needed and touching base again with everything. So
6 thank everyone very much and wish everyone a good day.
7 Thank you very much. We're adjourned.

8 (Proceedings adjourned at 12:24 p.m.)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in black ink that reads "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

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Date: October 15, 2024